

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
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In the Matter of

Reexamination of the Policy  
Statement on Comparative  
Broadcast Hearings

GC Docket No. 92-52

To the Commission

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**COMMENTS OF THE MINORITY MEDIA AND TELECOMMUNICATIONS  
COUNCIL, THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT  
OF COLORED PEOPLE, THE LEAGUE OF UNITED LATIN  
AMERICAN CITIZENS, AND THE NATIONAL BAR ASSOCIATION**

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The Minority Media and Telecommunications Council ("MMTC"), the National Association for the Advancement of Colored People ("NAACP"), the League of United Latin American Citizens ("LULAC") and the National Bar Association ("NBA") (collectively, "the Civil Rights Organizations") respectfully submit their Comments in response to the Second Further Notice of Proposed Rulemaking in the Matter of Reexamination of the Policy Statement on Comparative Broadcast Hearings, FCC 94-167 (released June 22, 1994) ("Second Further NPRM").<sup>1/</sup>

#### **Background**

Compared to telephony, radio broadcasting is not a large industry. But in its influence on an informed electorate, on culture, on youth socialization and on racial tolerance, radio broadcasting has unsurpassed influence.

Thus, the Commission should not be discouraged by the task before it, throwing up its hands and raffling off the last parcels of broadcast spectrum. Auctions may be suitable for spectrum not associated with the creation of content for public consumption, but, as the Commission reemphasized this week, Title III radio broadcasting services should not be licensed only to the party with the deepest pockets. MCI Communications Corp., FCC 94-188 (released July 25, 1994) at 10 ¶23.

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<sup>1/</sup> These Comments are submitted late with a motion for leave. LULAC has filed Supplemental Comments to the instant Comments. Where its Supplemental Comments and the instant Comments differ, LULAC's position is as stated in its Supplemental Comments.

While not perfect, the 1965 Policy Statement, 1 FCC2d 393 (1965), has served the public long and well.<sup>2/</sup> The process of applying for a license and defending an application in hearing, while not involving exactly the same skills needed to operate a broadcast station, nonetheless does teach broadcast newcomers to develop and defend sound business plans. Defending a proposal before an ALJ certainly screens out the faint of heart. The crossexamination process efficiently weeds out the Sonrise's of the world and their kindred charlatans. While many cases are settled -- as is the case in all civil litigation -- a party's ability to establish its basic and comparative bonafides in the hearing process often allows it to buy out the comparatively weaker applicants at a discount, thus effectuating the Commission's diversity-promoting goals in much the same manner as bidding credits do for PCS.

In 1991, the Civil Rights Organizations began an analysis of a sample of 100 FM comparative hearing cases which had yielded ALJs' initial decisions on the merits. The study is not yet complete because many of the cases have not yet been finally resolved on appeal. However, it is noteworthy that the ALJ's awarded 28 of these licenses to minorities. Some of these may turn out not to be legitimate, and some will fail through inadequate capitalization or through no fault of their own. In these respects, these businesses will not behave in the marketplace in a materially different fashion than would 28 nonminority businesses.

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<sup>2/</sup> As hotly contested as these cases often are, there has yet to be a single case decided by an ALJ which ultimately had to be decided by a tie-breaker system.

After all, business sense, business ethics and business luck are equally distributed among the races. But if even half of these 28% survive, the survivors will be six times the rate of minority ownership derived from station purchases.<sup>3/</sup>

It would be wrong for the Commission to announce to minorities that after nonminorities were given over 99% of the value of the broadcast spectrum for free, minorities must pay market price for the same spectrum. Past discrimination by the banking industry, and acquiescence in past discrimination by the Commission itself, are among the primary reasons for the underrepresentation of minorities in broadcast station ownership.<sup>4/</sup> Thus, even if the case for minority ownership were not so strong on diversity grounds alone, the Commission would be morally bound to do what it can with whatever spectrum it has left to rectify two generations of systematic minority exclusion.<sup>5/</sup> See Office of

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3/ Examples of successful minority owned radio stations procured by the current licensees through the comparative hearing processes are WDKX(FM), Rochester, NY (1974); WCXT-FM, Hart, MI (1982); KYFX-FM, Little Rock, AR (1991); WBGE-FM, Peoria, IL (1992); and WXQL-FM, Jacksonville, FL (1993).

4/ See Comments of NAACP and LULAC in Response to the Second Notice of Inquiry, GC Docket No. 92-52 (filed June 28, 1992), pp. 6-12. Affirmative remedial initiatives by the federal government are justified to remedy past discrimination. Fullilove v. Klutznick, 448 U.S. 448 (1980).

5/ The Commission's moral obligation is enhanced by its long history of deregulation initiatives which relied on minority ownership as its preferred alternative means of insuring diversity in programming. See, e.g., Deregulation of Radio (NPRM), 73 FCC2d 457, 482 (1979); Deregulation of Radio (R&O), 84 FCC2d 968, 977, recon. granted in part, 87 FCC2d 797 (1981) aff'd in pertinent part sub nom. Office of Communication of the United Church of Christ v. FCC, 707 F.2d 1413 (D.C. Cir. 1983) ("it may well be that structural regulations such as minority ownership programs and EEO rules that specifically address the needs of these groups is preferable to conduct regulations that are inflexible and often unresponsive to the real wants and needs of the public.")

Communication of the United Church of Christ v. FCC, 560 F.2d 529, 533 (2d Cir. 1977) (Commission "does not argue, nor could it, that the need for equal employment opportunity has become less urgent" since EEO enforcement began in 1969.)

The Commission is also duty bound not to violate an Act of Congress, Pub. L. 103-121, 107 Stat. 1153 (October 27, 1993). Congress has spoken often and explicitly on the need to protect minority ownership credit from extraneous mischief. The House Conference Committee Report adopted in 1982, when Congress affirmed its support for the distress sale policy, stated:

An important factor in diversifying the media of mass communications is promoting ownership by racial and ethnic minorities - groups that traditionally have been extremely underrepresented in the ownership of telecommunications facilities and media properties. The policy of encouraging diversity of information sources is best served by not only awarding preferences based on the number of properties already owned, but also by assuring that minority and ethnic groups that have been unable to acquire any significant degree of media ownership are provided an increased opportunity to do so.

H.R. Conf. Rep. No. 765, 97th Cong., 2d Sess. 40, 43 (1982). See also S. Rep. 182, 100th Cong., 1st Sess. 76 (1987) ("[d]iversity of ownership results in diversity of programming and improved service to minority and woman audiences.")

Unless additional spectrum is made available for broadcasting, the Second Further Notice represents the last best chance to provide minorities with the same access to virgin spectrum that nonminorities enjoyed exclusively during the first two generations of broadcasting. From the birth of radio in 1909 until the Rochester, New York FM proceeding which concluded in 1974, not one minority applicant was awarded a construction permit for new facilities. There followed fifteen years of very slow progress such that minorities now own an astronomical 2.4% of all

broadcast stations representing about 0.5% of broadcast industry asset value.

If Bechtel v. FCC, 10 F3d 875 (D.C. Cir. 1993) ("Bechtel") stands for any clear principle, it is that when circumstances have fundamentally changed, the Commission must take note and adjust its policies accordingly. Circumstances for minorities have changed -- for the worse. According to an analysis performed annually by NTIA since 1991, minority ownership has been numerically stagnant since 1991. As the Civil Rights Organizations predicted, growing concentration of stations in local markets through duopolies and LMAs has almost never inured to the benefit of minority owned stations.<sup>6/</sup> Thus, circumstances have changed -- for the worse -- for minorities.

The remaining 71 yet unresolved FM cases, borne largely of Docket 80-90, represent the last best chance for the Commission to do justice in the area of minority ownership.<sup>7/</sup> In doing so it should be guided by four overarching principles.

First, it should apply criteria which rationally predict future performance in the public interest. We refer to this as the "Predictive Principle." It underlies Bechtel, supra.

Second, it should insure that an applicant's weight on these criteria is readily and inexpensively calculable by a finder of fact. We refer to this as the "Calculability Principle." To

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<sup>6/</sup> See Review of the Technical Assignment Criteria for the AM Broadcast Service (MO&O on reconsideration), 8 FCC Rcd 3250, Separate Statement of Commissioner Andrew C. Barrett, at 3261, n. 4 to Statement.

<sup>7/</sup> An unofficial enumeration of pending comparative hearing dockets was provided to MMTTC as a courtesy of the Office of the Chief Administrative Law Judge.

effectuate this principle, we urge the assignment of numerical values, in increments no finer than 1/8 of a point, roughly corresponding to the loose terms used by describe quantitative quantitative weights of comparative factors: "heightened substantial" credit (8); "substantial" credit (4); "moderate" credit (2), "slight" credit (1); "very slight" credit (0.5).<sup>8/</sup>

Third, it should insure that applicants cannot easily manipulate the system to produce unintended outcomes, such as (1) nonminority controlled companies using a minority as a front, or (2) minority controlled companies financially structured to guarantee a quick reversion to more deeply pocketed and conniving nonminority investors. We refer to this as the "Genuineness Principle."

Fourth and most critically, it should do nothing to dilute the effectiveness of the minority ownership credit. Indeed, it should strengthen the relative weight of that credit very substantially. We refer to this as the "Equity Principle."

## **II. The Impact of Bechtel v. FCC**

### **A. Integration Can Remain A Valid Comparative Factor If Coupled With Minority Ownership Or Civic Participation, And With Service Continuity Of At Least Three Years**

Bechtel did not hold that as a matter of law, integration is never a valid comparative factor. It only held on that on the record before it, the Commission had not demonstrated its validity,

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<sup>8/</sup> A renewal expectancy credit is an example of a heightened substantial credit. The Civil Rights Organizations urge that minority ownership also be assigned this weight in comparative hearings for new facilities. "Substantial" credits currently attend minority ownership and full local/civic credit. A "moderate" credit attends local residence without civic participation. A "slight" credit attends broadcast experience and a "very slight" credit attends auxiliary power.

particularly in light of an applicant's ability to relinquish control of the station almost immediately.

This major deficiency with integration can be rectified by a return to the three-year holding period, which never should have been eliminated in the first place.

In some circumstances, integration has far less predictive value for future service. If an integrated principal is not going to work in senior management (general manager, station manager, operations manager, or program director), integration probably has little or no value. Indeed, many sham applicants have "integrated" powerless minor principals who are minorities into such lesser roles as public affairs or community service directors and even traffic directors. This is silly and it has nothing to do with content-diverse service. Similarly, short-term jobs and parttime jobs offer little value for predicting content-diverse service.

The concept of integration assumes that an applicant's principal brings to the table knowledge, sensitivities or a background which, when applied to the task of station management, will yield content-diverse broadcast service which the public might not otherwise receive. If an applicant lacks such knowledge, sensitivities or background, he or she may have nothing to integrate. The integration-validating factors should be civic participation and minority ownership; as shown infra, these should also be stand-alone comparative factors in their own right, since they predict content-diverse service even without integration.

Broadcast experience should not be an integration-validating attribute. Broadcast experience predicts efficient service, a goal well effectuated already through the marketplace for the sale and operation of all of the other radio stations in the country.

Broadcast experience does not predict content-diverse service.

Consequently, the Commission should allow applicants to make a special showing for integration credit only where they demonstrate that (1) the integration will last at least three years; (2) it is for senior management positions; (3) it is fulltime; and (4) it is accompanied by the presence of minority ownership, substantial civic participation, or both.

**B. Even If Integration Is Eliminated, Some Comparative Factors Are Predictive Of Future Service Even If Found In Absentee Owners**

With or without integration, some comparative factors have value in their own right as standalone factors, because even absent integration, they are still predictive of service in the public interest. Examples of such factors are enumerated below.

**1. Minority Ownership**

As the distress sale and tax certificate policies implicitly recognize, minority ownership per se promotes diversification. Metro Broadcasting Co. v. FCC, 497 F.2d 547 (1990), which affirmed the distress sale policy, was not dependent upon integration of ownership and management. Minority ownership should not be wedded to integration in comparative hearings either. In Las Misiones de Bejar Television Co., 56 RR2d 1481, 1483 (1984) Commissioner Rivera -- ten years ahead of his time -- wrote in dissent:

there is a "serious gap" between the value Congress, the courts and the FCC say should be attached to minority ownership and the value that is actually assigned to such ownership in comparative broadcast cases. In view of the continued representation of minorities in broadcast ownership, and the clear federal interest in remedying the problem, restriction of comparative credit to instances in which minority owners will be integrated into management is inexplicable as a matter of policy, and questionable as a matter of law -- particularly where, as here, minority participation will have significant public interest benefits.

As discussed herein, there is a pressing need to remedy the past three years' decline in minority broadcast ownership. Consequently, the Commission should assign to minority ownership a heightened substantial weight, equal to twice the current weight of a substantial preference.

**2. Civic Participation, With Or Without Local Residence**

A local ownership credit, standing by itself without any civic participation, has almost no value in predicting future performance. Broadcasting is a local business, but broadcast managers are highly mobile, seldom making their careers in only one city. A broadcast manager who has participated civically in three or four cities is likely to offer a far more community involved, content-diverse broadcast service than a person who happens to lived 20 years in the community of license but has spent those 20 years vegetating indoors. Such a person may not get lost in local traffic, but his or her sloth and indifference will only yield insular service to the public.

Often it is precisely the initiative, the fresh viewpoints of outsiders who most enrich and enliven a community. The history of the civil rights movement in the American South is the best example of this. Martin Luther King was chastised in the Montgomery Advertiser as an outsider from Georgia when he was selected to lead the bus boycott, and idealistic northern college students were dismissed as "outside agitators" because they risked their lives helping southern Blacks register to vote. Most of the greatest American scientists and inventors of the 19th and early 20th century were "outsiders" both in other countries.

In broadcasting, "localism" requires a willingness to learn and improve on the best of a locality. "Localism" does not require "locals" who sometimes have become either immune or insensitive to local needs.

Emphasis on civic participation rather than local residence will usually work to the comparative benefit of minorities. Because they usually appreciate the need to give something back, most minority broadcast professionals are highly civically involved, no matter where they live and work. Like other civically involved persons, they deserve credit for that involvement, attendant to which is a recognition that a caring heart travels with a person. All enterprises recognize this when they recruit and hire senior managers. In the military, valor can be demonstrated at home or abroad; in the judiciary, fairmindedness can be demonstrated in any courtroom; in business and academia, public service can be demonstrated anywhere.

Therefore, we propose that civic participation, wherever it occurred, should replace the present combined local/civic credit as the vehicle for predicting sensitivity to community needs. That change in approach would be consistent with the Commission's decision, in Deregulation of Radio, supra, that local needs can be met with nonlocal programming sources.<sup>2/</sup>

### **3. Broadcast Or Comparable Business Experience**

The 1965 Policy Statement was correct in recognizing that broadcast experience can be learned on the job and "could discourage qualified newcomers to broadcasting." 1965 Policy

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<sup>2/</sup> If there is still a place for local ownership in the comparative scheme, it might be to slightly enhance civic participation or minority ownership.

Statement, 1 FCC2d at 396. Indeed, the historically low representation of minorities in broadcast employment usually renders the broadcast experience credit a regressive, diversity suppressing factor in comparative hearings. 1 FCC2d at 396. Too much credit for this factor will only reinforce the present effects of past and present discrimination in broadcast employment.

There is but one circumstance in which broadcast experience might deserve greater than "slight" credit: when minority broadcasters, attempting to survive in an economic climate extremely hostile to them, somehow persevered and attained a considerable level of broadcast experience. A "minority broadcast experience" credit should also be available for minority applicants having experience closely related to and transferable to broadcasting, such as experience in publishing, telephony, media education, public relations or senior management in a substantial service business. Such a credit, which might have "moderate" weight, would recognize that a success in minority enterprise is highly predictive of success in broadcasting.

The range of occupations for which credit should be given need not be identified with precision at the outset. The comparative hearing process already has the flexibility to accommodate even entirely new credits and preferences. 1965 Policy Statement, 1 FCC2d at 399.

Expansion of the broadcast experience credit in this manner would attract a larger number of sophisticated and economically successful minority business executives into broadcasting. Such individuals, who may have been discouraged early in life from pursuing a broadcast career owing to rampant discrimination in the industry, may have become quite successful in other occupations

whose skills are readily transferrable to broadcasting.

This type of sophisticated minority applicant is unlikely to have any tolerance for sham proposals. Thus, a beneficial side effect of this proposal is that it would provide an incentive for the filing of genuine as opposed to sham applications.

Finally, the Commission should take this opportunity to reverse its 1985 holding that a nonminority applicant's broadcast experience may be considered even when "it occurred at a time when discrimination made it virtually impossible for a minority group member to acquire any comparable experience." Radio Jonesboro, Inc., 100 FCC2d 941, 946 n. 13 (1985) (subsequent history omitted) (crediting nonminority applicant's experience as a radio announcer in Arkansas in the 1950s; the applicant prevailed over a minority applicant). Credit for employment obtained at a time when nonminorities did not have to compete with minorities for broadcasting jobs only reinforces and manifests the present effects of past discrimination. The Radio Jonesboro holding, if not unlawful on its face, offends public policy and should be reversed. See Columbus Board of Education v. Denick, 443 U.S. 449, 458-59 (1979) (14th amendment requires abandonment of policies which reinforce present effects of past discrimination).

**C. Some Comparative Factors Should Be Eliminated,  
Or Should Not Be Considered, Since They Have  
Questionable Or No Proven Value And Could  
Inhibit Minority Ownership**

**1. Daytimer Preference**

As noted above, broadcast experience credit tends to be available mostly to nonminorities because past discrimination has prevented the full enjoyment of broadcast employment by minorities. This deficiency in Commission policy is exacerbated further by the

"daytimer preference," which was created to "balance" minority ownership. NBMC v. FCC, 822 F.2d 277 (2d Cir. 1987). The theory behind the daytimer preference is that by going off the air at sunset, a broadcaster somehow derives broadcast experience so valuable that it should neutralize minority ownership. In practice, the daytimer preference only institutionalizes the past discrimination which resulted in the current paucity of stations owned by minorities.<sup>10/</sup>

When the daytimer preference was adopted, minority ownership was gaining steadily as a result of other policies, particularly tax certificates, distress sales and strict multiple ownership rule limitations. Those policies no longer protect or advance minority ownership, which is now in decline. Therefore, although created to "balance" minority ownership, the daytimer preference now "balances" something which is severely out of balance. It should be eliminated or greatly reduced in weight.

## **2. Past Broadcast Record**

The possibility of a second chance to serve the public should no longer be a comparative factor. "Past broadcast record", applied to a 97.5% nonminority industry, only institutionalizes past and present discrimination.

## **3. Auxiliary Power and Comparative Coverage**

After obtaining a license, virtually every applicant installs auxiliary generators, and virtually every Class A FM which can do so upgrades to a Class C3 and selects an optimal tower

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<sup>10/</sup> Daytimers as a group include about 3% minority owners. To the Civil Rights Organizations' knowledge, in no pending case has any applicant claiming a daytimer preference been a minority.

location. Thus, the auxiliary power and comparative coverage factors have little value except to enrich lawyers and engineers. These factors have absolutely no correlation to future content-diverse service, and thus do not belong in the comparative hearing process. No system of preferences is needed to stimulate economically motivated applicants to buy backup generators or reach as many listeners as possible.

#### **4. The Proposed "Finders Preference"**

The proposed "finders preference" has been touted as an incentive to encourage entrepreneurs to identify and apply for new allotments. However, with the broadcast spectrum virtually used up except for rural FMs and the remaining Docket 80-90 cases still unresolved, there is hardly any need for an incentive for "finders." Those who "found" allotments currently subject to comparative hearings apparently did not require the possible reward of a "finders preference" to motivate them.

Furthermore, the "finders" preference is illogical. There is no evidence whatsoever that the simple act of having an engineer file a rulemaking proposal makes someone a better broadcaster. A "finder" could be -- and often is -- nothing more than an uninvolved client of an engineer. The "finder" may be someone motivated only by pecuniary interest, rather than public service.

Finally, the proposed "finders preference" is probably unlawful (at least when applied to proceedings containing a minority applicant) because it dilutes and diminishes minority ownership indirectly, a feat which could not be accomplished

directly without falling afoul of the intent of Congress.<sup>11/</sup>

**III. The Anax Policy Should Be Retained For Minority Ownership, With Protections To Prevent Abuse**

The Civil Rights Organizations strongly support retention of the Commission's policy in Anax Broadcasting, Inc., 87 FCC2d 483, 488 (1981) ("Anax") allowing genuine two-tier companies to attribute only their voting shareholders or general partners. See Minority Ownership in Broadcasting, 92 FCC2d 859 (1982). However, the Civil Rights Organizations urge restriction of Anax to minorities, the group it was originally intended to benefit.

The type of applicants Anax most appropriately benefits are minorities with careers in broadcasting who are ready to own their own stations but are unable to afford it without investors. That type of applicant is highly likely to provide alternative viewpoints over the airwaves. Eliminating the financing opportunities attendant to legitimate two-tier minority applicants will only exacerbate the extreme difficulties minorities have had in financing entry into station ownership.

The elimination of Anax would reverse many of the minority ownership gains of the past decade. Before Anax, minorities seldom won comparative hearings. Without the assistance of interested investors, many minorities simply lacked the resources to file applications without passive investors.

If process abusing sham applicants remain a problem, the Commission should deal directly with that problem. It can do this

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<sup>11/</sup> It is no surprise that nearly all "finders" are nonminorities. All of the work attendant to being a "finder" is done by the engineer, not the "finder." The good old boy network of engineers and their clients seldom includes minorities. About 150 engineers regularly do drop-in petitions and Form 301's. Only one is Black and one is Hispanic.

by taking steps to help assure that voting equity holders maintain control. The Commission can do this in several ways:

1. Extend the insulation provisions attendant to RULPA styled limited partnerships to two-tiered stock corporations.
2. Require two-tier permittees who won their construction permits in comparative hearings to certify, in their applications for licenses to cover the permits, and in each subsequent ownership report for the succeeding three years, that the voting owners have maintained both voting and operating control, presently are in control, and will continue to maintain control. The license to cover is the appropriate occasion on which to obtain this information, since its purpose is to verify that all conditions of the construction permit have been met.
3. Require two-tier permittees, in their applications for licenses to cover, to show the basis upon which the construction of the station was financed, and the basis upon which initial operations will be financed. Copies of any agreements between the voting owners and the non-voting owners, as well as any documents involving the station to which the non-voting owners are a party, should also be provided with the license to cover application.
4. Direct the Field Operations Bureau staff to randomly check two-tier licensees who secured their original permits in comparative hearings to insure that the voting owners are in fact maintaining control. See 47 CFR §0.111(a) (delegation of authority to FOB).
5. Require the voting parties in two-tier applicants for radio permits to have and retain at least a 20% interest in the applicant. See Minority Ownership in Broadcasting, 92 FCC2d 847, 855 n. 28 (1982) (20% equity ownership is appropriate, "reflecting the realities of the financial and business world.")
6. Issue forfeitures against the nonvoting stockholders or limited partners of sham applicants. That procedure should also be applied to real parties in interest in one-tier applicants.

These policy adjustments should eliminate most shams while allowing retention of the genuine minority ownership and diversification-promoting benefits of Anax.

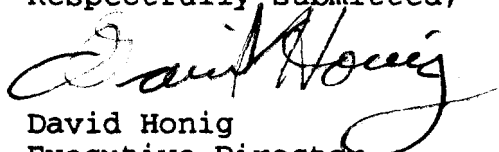
**IV. Elimination Of Integration Would Be A Comparative Windfall For Applicants Who Falsely Claimed 100% Integration Credit. To Avoid Elevating Their Comparative Strength, Nongenuine Applicants Who Abused Integration Should Receive A "Nongenuineness Demerit."**

The successful appellant in Bechtel advanced a principled challenge to the validity of the integration criterion and preserved its challenge through two court appeals. But it should not be surprising that many of those most hoping for the elimination of integration as a comparative factor are not Bechtel-type applicants. Instead, they are run-of-the-mill "structured" applicants who embraced and proposed integration, but attempted to take unfair advantage of integration by advancing highly suspect integration proposals. Those applicants likely would have been adjudicated to have less than 100% integration credit, which in most cases would have doomed them comparatively. Ironically, while Bechtel takes sharp aim at these kinds of nongenuine applicants, an unintended consequence of the elimination of integration could potentially be a bailout of nongenuine applicants from the consequences of their own nongenuine structures. That unfortunate result obtains because without integration, a nongenuine applicant stands on the same comparative footing as a genuine applicant which really intended -- and may still intend even without Bechtel -- to apply its civic involvement and minority status to the fulltime, long term, management of a radio station.

To avoid a comparative windfall to nongenuine applicants, the Commission should create a "nongenuineness demerit" to be applied in those proceedings in which an applicant falsely claimed more integration credit than it deserved. A minor or good faith

difference between claimed integration and actual integration should not trigger the demerit. However, for example, if an applicant claimed 100% integration for its 20% equity holding general partner but the brazen involvement of the 80% equity holding limited partner would have reduced the applicant's integration claim to 20%, the applicant should be awarded a substantial nongenuineness demerit, quantitatively equivalent to a substantial diversification demerit.

Respectfully submitted,



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